

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN DOE,	.
	.
Plaintiff,	.
	. Case No. 21-cv-20706
vs.	.
	. Newark, New Jersey
BAILE SEBROW,	. February 29, 2024
	.
Defendant.	.
	.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EDWARD S. KIEL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared via teleconference):

For the Plaintiff: DANIEL SZALKIEWICZ, ESQ.
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Also present: Plaintiff

For the Defendant: IRA W. HELLER, ESQ.
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Also present: Ms. Sebrow

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1 (Commencement of proceedings)

2

3 THE COURT: Good morning, everyone. We're on the
4 Doe versus Sebrow matter. It's Case 21-cv-20708.

5 If I could have the appearance on behalf of
6 plaintiff, please.

7 MR. SZALKIEWICZ: Daniel Szalkiewicz, Daniel
8 Szalkiewicz & Associates, P.C., 23 West 73rd Street,
9 Suite 102, New York, New York 10023, for the plaintiff, who
10 is on the line as well, I believe, on a separate dial-in
11 number.

12 Good morning, Your Honor.

13 THE COURT: Good morning. Okay. That's fine. He
14 can listen in.

15 How about for defendant?

16 MR. HELLER: Yes, good morning, Your Honor. Ira
17 Heller for Betty Sebrow, who I believe is also calling in.

18 THE COURT: Okay. There's nobody else, but if
19 there's somebody else that comes in the lobby, I'll let them
20 in.

21 I did have a conference back in October 2023, that
22 there were some things that I wanted to put in an order,
23 which I didn't, and that fell through the cracks, and I
24 apologize to everyone that that order is not -- did not go
25 up.

1 As part of that order, I was going to have a
2 conference on November 22nd to follow up on an anticipated
3 motion that was going to be filed by Mr. Heller to file an
4 amended counterclaim and an answer. And since then there's
5 been a few things that I was checking back on the docket. I
6 am going to get this case back on track. And, again, I
7 apologize for not putting that order on.

8 There was a motion for an extension of time to file
9 an answer. That was at ECF Number 92. That, at the last
10 conference, I said would be administratively terminated,
11 pending, as I said, Mr. Heller's motion to file an amended
12 counterclaim and an answer out of time.

13 You didn't file that motion, sir, Mr. Heller.
14 Instead, you filed an answer at ECF Number 102, I guess, in
15 response to plaintiff's request to the entry of default.

16 Is that correct, sir?

17 MR. HELLER: Your Honor, my recollection is that I
18 did file a motion for permission to file out of time.

19 THE COURT: Right. You did back in September. You
20 did back in September of 2023. And at the last conference, I
21 advised you that that motion -- that motion was going to be
22 administratively terminated to file a motion to file an
23 amended complaint and counterclaim and explain why you should
24 be entitled to file an amended counterclaim that differs
25 entirely from what you had before.

1 Do you remember that discussion?

2 MR. HELLER: I do remember the discussion, and I
3 remember making several filings. I have to check,
4 Your Honor.

5 THE COURT: You know, well, the filing that you did
6 was a -- was a letter, a proposed order, and what appeared to
7 be the proposed amended complaint -- or I'm sorry -- amended
8 answer and counterclaim.

9 But we have rules on how to make a motion to file
10 an amended pleading.

11 Judge Wigenton gave you the right to file an
12 amended counterclaim but as to certain counts. But you were
13 going to go beyond that, and so I wanted you to brief as to
14 why you should be entitled to file an amended counterclaim
15 that goes beyond the original counterclaim.

16 Do you remember that discussion?

17 MR. HELLER: I remember the discussion, Your Honor.

18 THE COURT: Okay.

19 MR. HELLER: So -- yeah.

20 THE COURT: Okay. Just as I said -- and I
21 apologize I didn't put up the order. It was part of the
22 transcript that was put on the docket at ECF Number 100, that
23 the motion to be administratively terminated without
24 prejudice. You can refile it following the rules. There has
25 to be a red-line explaining what the changes are going to be

1 and why -- again, why you're entitled to file an amended
2 counterclaim that goes beyond what Judge Wigenton permitted
3 you to do and why it should be permitted out of time.

4 Okay, sir?

5 MR. HELLER: Appreciate the opportunity.
6 Absolutely.

7 THE COURT: All right. You can file that.

8 But as a result, there was also a motion for
9 sanctions that was -- or an application for sanctions
10 relating to the pseudonym issue and discovery.

11 But then after the October 12th conference that I
12 had, Mr. Heller filed a motion to accept objections on
13 October 20th, at ECF Number 96.

14 There's a lot there. And I think Mr. Szalkiewicz
15 tried to make heads or tails of it, and he filed an
16 opposition.

17 But what I get from it, Mr. Heller, is that you are
18 filing an appeal of certain orders that I previously entered
19 in the case.

20 And I take no objection to that. And lawyers are
21 certainly entitled to do that. But I just want to make sure
22 that that's what you are doing in that motion.

23 MR. HELLER: Yes, Your Honor. And I appreciate
24 your deciphering, you know, things that may not be exactly,
25 you know, in accordance with the procedures. I'm doing the

1 best I can. I don't practice in federal court, as you know,
2 very frequently. It's very rare.

3 So --

4 THE COURT: All right. Thank you.

5 MR. HELLER: -- exactly --

6 (Simultaneous conversation)

7 THE COURT: Well, that's what Mr. Szalkiewicz
8 appears to be doing as well. He tried to decipher it,
9 responded to it. There was no reply to his opposition. I
10 don't think that an opposition -- I'm sorry -- a reply is
11 permitted under the rules. But you can check that. But that
12 would be out of time anyway.

13 So as a result of that motion, which seeks to
14 appeal certain decisions I made previously, I think at this
15 point, that you can't decide the sanctions issue because
16 that's now before Judge Farbiarz, who's going to decide
17 whether my previous orders regarding pseudonym and those
18 types of things were proper or not.

19 So that's where we are. You can file your motion,
20 as I said, on those -- and provide the bases, as I said. And
21 whenever you file it, we'll have a conference on it and
22 figure it out.

23 Let me just ask. What is the status of the state
24 case.

25 Mr. Szalkiewicz?

1 (Simultaneous conversation)

2 MALE SPEAKER: Go ahead.

3 MR. SZALKIEWICZ: Yeah, no, look, I haven't been,
4 I'm not on it. It's my understanding that it's continuing
5 still to this day.

6 You know, this case, obviously, from my
7 perspective, Your Honor, has completely stalled. I
8 understand that Mr. Heller filed about three or four motions
9 outs of time that are still pending. But, you know, it is my
10 desire to get this back on track and to continue to whatever
11 we need in order to do it.

12 THE COURT: Yeah, well --

13 MR. SZALKIEWICZ: -- I think at the last
14 conference --

15 THE COURT: Yeah. And that --

16 (Simultaneous conversation)

17 THE COURT: Just hold on, Mr. Heller.

18 It is -- well, I meant back on track in terms of
19 resolving the motions for extension of time, giving
20 Mr. Heller direction on how to do it properly.

21 But as far as discovery -- and, you know, as far as
22 discovery, discovery's done from the defendant to the
23 plaintiff. There are issues related to the sanctions that I
24 think are encompassed in the appeal that's before Judge
25 Farbiarz. So I think it 's on track in terms of discovery,

1 and we are going to -- where we're going to go once Judge
2 Farbiarz decides that appeal. And I think that we are all
3 set. If everything is affirmed by Judge Farbiarz, which I
4 have no idea, then we'll pick it up from where the case was
5 and in terms of discovery, and I'll resolve the sanctions
6 motion and where we are going with any further discovery that
7 the plaintiff needs from the defendant.

8 Mr. Heller, you want to tell me what's going on
9 with the state case?

10 MR. HELLER: Yes, sure, Your Honor.

11 So the Judge Sanders, who is presiding in that
12 case, is actually moving. So we actually got stalled for a
13 month, but they actually put it on the fast track. We're
14 going to be in court the entirety of the first half of April.
15 As opposed to going back every week, we're going to be there
16 daily for the entire first half of that month, trying to get
17 the --

18 THE COURT: Okay. Okay.

19 MR. HELLER: -- finished.

20 So --

21 (Simultaneous conversation)

22 THE COURT: -- still going --

23 (Simultaneous conversation)

24 MR. HELLER: -- we should have a lot --

25 information --

1 THE COURT: All right. So it's still going --

2 (Simultaneous conversation)

3 MR. HELLER: -- and material for what we are going
4 in this court.

5 THE COURT: Okay. That's all I need to know, is
6 that it's still going.

7 MR. HELLER: So --

8 THE COURT: All right.

9 MR. SZALKIEWICZ: It's still going, Your Honor.
10 I guess the only other issue was we amended the
11 complaint to include the issue regarding the fraudulent
12 documents and failure to turn over certain documents. You
13 know, we would ask to be able to, if we need to -- continue
14 to depose Ms. Sebrow regarding what she did or did not do
15 because her depositions were not included in this case.

16 THE COURT: Well, as I said, there is a lot of
17 pending before Judge Farbiarz, but that's outside of the
18 scope of what's out there --

19 (Simultaneous conversation)

20 MR. SZALKIEWICZ: -- outside because it relates to
21 the amended claims that the -- gave -- permission to relating
22 to the destruction of the evidence.

23 THE COURT: Well, you --

24 (Simultaneous conversation)

25 THE COURT: -- you filed an amended complaint on

1 June 1st.

2 MR. SZALKIEWICZ: Right.

3 THE COURT: One of the things that we talked about
4 with Mr. Heller and maybe he can put that in his brief as
5 well, whether you have a right -- whether you have the right
6 to file an amended counterclaim that goes beyond what you
7 previously did in response to the amended complaint. It
8 would be out of time still. But, you know, the amended
9 complaint may change the procedural aspect of whether he's
10 entitled to file a different counterclaim in response to
11 that.

12 All right. If you want to take further discovery
13 and you think that it's not relevant or it's not barred by
14 this pending appeal before Judge Farbciarz, just put a letter
15 on the docket, you know, confer with Mr. Heller, and I'll
16 resolve it.

17 I am going to have a conference relatively shortly;
18 so if you put that on the docket, I'll resolve it at the next
19 conference.

20 Mr. Heller, you can do whatever you like on the
21 motion that you're going to be filing. And try to file that
22 sooner than later because if it's not, you know, fully
23 briefed by the next conference, then we're going to have to
24 kick it down the road. Okay?

25 MR. SZALKIEWICZ: Okay.

1 THE COURT: Okay, Mr. Heller?

2 All right. So --

3 MR. HELLER: Yes.

4 THE COURT: All right. Let me put it out for a
5 telephone conference. Hopefully we can get everything moving
6 and maybe Judge Farbiarz will have a decision on the appeals
7 by then.

8 Let me see. March -- no. I'm going to put it out
9 April -- sorry. April 2nd at 2:00 P.M. for a follow-up
10 telephone conference.

11 MR. HELLER: Okay. Is the issue is -- yes, Judge.
12 I'm sorry.

13 So the only issue is that that conflicts with a
14 trial date actually in Essex County on this matter.

15 So --

16 THE COURT: All right. Well, I can move it. How
17 about April 1st? That's April Fool's Day.

18 MR. HELLER: Yeah, every day that week, we're --

19 THE COURT: Oh, okay --

20 (Simultaneous conversation)

21 THE COURT: All right. Okay.

22 So April --

23 MR. SZALKIEWICZ: March -- maybe?

24 THE COURT: I don't think you're all going to get
25 everything -- if he files his motion, I am not sure we'll

1 have enough time to get it.

2 Well, let me look. If he files the motion -- let
3 me get my motion calendar up. Yeah, the next filing date
4 would -- and return date would be April 1st, if the next
5 filing date is March 8th, then you have until March 18th to
6 file your opposition, and then March 25th for reply, and then
7 the return date would be April 1st.

8 So it sounds like a date in April's probably
9 better.

10 MR. HELLER: Yes, just to make things a little bit
11 clearer, so, yeah, that first time in April was actually
12 taken up up until the Friday before Passover, which starts on
13 the 22nd.

14 I did put in a request that the last three dates of
15 the week of the 15th not have trial so that, you know --

16 (Simultaneous conversation)

17 MR. HELLER: -- have to --

18 THE COURT: What time does the trial start?

19 MR. HELLER: So --

20 THE COURT: What time does the trial start?

21 MR. HELLER: 8:30 in the morning is the scheduled
22 time.

23 THE COURT: Okay. And then when do you --

24 (Simultaneous conversation)

25 MR. HELLER: What I would ask --

1 (Simultaneous conversation)

2 THE COURT: Listen, sir. Sir.

3 MR. HELLER: Sorry. Go ahead.

4 THE COURT: So when do you take a break for lunch?

5 MR. HELLER: 1:30.

6 THE COURT: Okay.

7 MR. HELLER: Sorry. It would be 12:30 to 1:30.

8 I'm sorry.

9 THE COURT: Okay. April -- April 8th at 12:30.

10 I'm sure you can get on a telephone call, sir.

11 Okay?

12 MR. HELLER: Yes, sure. Okay.

13 THE COURT: All right. April 8th at 12:30 P.M.,
14 we'll have follow-up teleconference conference.

15 If you don't file that motion in time, sir, it's --
16 it's going to be difficult to imagine that that would ever be
17 granted in the future. I just want to put that out there for
18 you, Mr. Heller. Okay?

19 MR. HELLER: Yes, thank you.

20 THE COURT: All right. April 8th, 12:30, we'll put
21 the text order up with the call-in, dial-in. We're going to
22 do that by video conference. All right.

23 And I reiterate my apologies for letting it slip
24 through the crack, although there is something pending before
25 Judge Farbiarz which prevents me from doing a lot stuff. But

1 I should have put the order up and resolved that motion
2 that's pending out there earlier.

3 All right. Anything further for the parties today?

4 UNIDENTIFIED SPEAKERS: No.

5 THE COURT: All right, everybody. Have a good day.
6 We'll talk to you soon. We're off the record.

7 (Conclusion of proceedings)

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Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 15 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

7th of March, 2024

Signature of Approved Transcriber

Date

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